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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER	
JANVIER, JEAN D	
ART UNIT	**PAPER NUMBER**
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JERRY.SHORMA@HP.COM
mkraft@hp.com
ipa.mail@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARC P. SCHUYLER

Appeal 2008-1395
Application 09/703,459
Technology Center 3600

Decided:[1] March 2, 2009

Before ANTON W. FETTING, DAVID B. WALKER, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) (2002) from the final rejection of claims 1-11. We reverse.

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[1]The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Representative claim 1 reads as follows:

> 1. A method of targeting promotions to an individual associated with a vehicle, where the vehicle includes an on-board system including vehicle sensors from which a maintenance event can be detected, said method comprising:
>
> detecting a vehicle maintenance event, including
>
> digitally interrogating the on-board system of the vehicle,
>
> detecting when the vehicle maintenance condition meets predetermined maintenance criteria, and
>
> transmitting wirelessly to a remote computer an identification that the particular vehicle has met the predetermined maintenance criteria;
>
> generating a promotion associated with the vehicle maintenance event; and
>
> providing the promotion to the individual associated with the particular vehicle, including
>
> using an association between the individual and the particular vehicle to associate the vehicle maintenance event with the individual, and
>
> sending the promotion to the individual.

The references set forth below are relied upon as evidence in support of the rejections:

Mezger	US 5,781,871	Jul. 14, 1998
Park	US 5,627,549	May 6, 1997
Scroggie	WO 97/23838	Jul. 3, 1997

Claims 1-6 and 8-11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mezger in view of Scroggie. Claim 7 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Mezger in view of Park. The dispositive issues are whether the combinations asserted by the Examiner respectively teach (1) "detecting a vehicle maintenance event" and "generating a promotion associated with the vehicle maintenance event;" and (2) "the vehicle has an on-board computer system and a vehicle user display screen; and sending the promotion to the individual includes sending an electronic message to the on-board computer system for the vehicle which causes the computer system to visually display the promotion for the user."

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

Rejection of claims 1-6 and 8-11 under 35 U.S.C. § 103(a) as unpatentable over Mezger in view of Scroggie.

The Appellant argues that neither reference teaches "detecting a vehicle maintenance event" and "generating a promotion associated with the vehicle maintenance event" as required by claim 1. The Appellant further argues that the term "vehicle maintenance event" should be construed to

mean "an event that triggers the need for vehicle maintenance" (Br. 7-8). The Examiner does not provide an alternative definition. The Examiner concedes that Megzer does not expressly disclose generating a promotion related to the maintenance event or the detection of a faulty operation in a vehicle, but found that Scroggie discloses an incentive distribution network or system for providing purchase incentive offers such as electronic coupons, recipes, rebates, shopping aids, product samples, supermarket specials, etc., from a plurality of providers to qualified customers over the Internet or communications network (Answer 4). The Appellant argues that Scroggie teaches providing incentives only to members who log into their system and not based on a detected condition, such as a vehicle maintenance event as required by claim 1 (Reply Br. 7).

We agree with the Appellant. Scroggie teaches a system where users can register and input their individual identification, a postal code region, and retail store selection as well as transmitting a plurality of incentives offers to the user, each of which is may be exercised based on the customer's postal region (Scroggie, 4:3-12). Scroggie does not teach generating a promotion associated with a detected condition or event as required by claim 1.

The Examiner further found that it is common practice for a car dealer to collect customer personal data, to record the last odometer reading of the customer's car during a car purchase or service, and to estimate after a certain period of time when the car is due, for instance, for a motor oil change, a transmission oil change, tune-up, timing belt change, etc., in accordance with the car manufacturer's recommendations for service

maintenance based on the number of miles thus far recorded, in order to keep the car in good operating condition (Answer 7-8).

The Appellant argues that the Examiner's well known materials do not teach or suggest sending promotional materials based on the detection of a vehicle maintenance event in the specific car; it only guesses based on the odometer reading of the car (Reply Br. 6). According to the Appellant, any promotional material that overlaps with the need for vehicle repairs would be largely coincidental or not specific to that car, because the guessed mileage may not match the actual mileage, and even the actual mileage may not match a need for servicing because it indicates a manufacturer recommendation for servicing in general, not whether the specific car needs servicing (Reply Br. 6). We agree with the Appellant that the Examiner's "well known materials" do not teach or suggest sending promotional materials based on the detection of a vehicle maintenance event as required by claim 1.

Although Mezger is directed to a method of determining diagnostic threshold values for a particular motor vehicle type, it does not address promotions or, more particularly, generating a promotion associated with a vehicle maintenance event. Neither Scroggie nor the Examiner's well-known materials remedy the deficiency of Mezger, as neither teaches generating a promotion associated with a detected event. The combination advanced by the Examiner thus fails to teach generating a promotion associated with a vehicle maintenance event. Because each of claims 1-6 and 8-11 requires "generating a promotion associated with the vehicle maintenance event," the Examiner has failed to establish a prima facie case of obviousness of claims 1-6 and 8-11 over Mezger in view of Scroggie.

Rejection of claims 7 under 35 U.S.C. § 103(a) as unpatentable over Mezger in view of Park.

The Appellant argues that the cited references do not teach or suggest that "the vehicle has an on-board computer system and a vehicle user display screen; and sending the promotion to the individual includes sending an electronic message to the on-board computer system for the vehicle which causes the computer system to visually display the promotion for the user" (Reply Br. 11). The Examiner concedes that Mezger does not teach this limitation, but found that:

> Park discloses a system wherein a user or operator of mobile vehicle 10 can interact with an advertisement or promotional message (promotion) aired and transmitted (synchronized broadcast 22 and 26) by pressing the where button 102(f) in the front panel of information device 40 inside the mobile vehicle 10, which indicates to the microprocessor 60 of device 40 that the driver or operator desires to collect or to receive further information, such as the advertiser's name, address or location and so forth, from the broadcast 22 or transmitted or aired or played advertisement and wherein the requested information is displayed to the operator or driver of the vehicle on the device 40 screen 100a as shown in fig. 3.

(Answer 10). The Appellant argues that Park does not teach or suggest "sending the promotion to the individual includes sending an electronic message to the on-board computer system for the vehicle which causes the computer system to visually display the promotion for the user," because, in order to receive promotional material, a user has to push button 102f when

an advertisement is audibly emitter to the user. According to the Appellant, the promotional material would be the promotional material from the audio advertisement that the user hears (Reply Br. 11-12, citing Park, col. 6, ll. 41-54 and Figure 3). We agree with the Appellant that user action (pushing the button) and not sending an electronic message to the on-board computer system for the vehicle causes the computer system to visually display the promotion for the user. The Examiner thus has failed to establish a prima facie case of obviousness of claim 7 over Mezger and Park.

The decision of the Examiner to reject claims 1-11 is reversed.

REVERSED

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HEWLETT PACKARD COMPANY
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FORT COLLINS, CO 80527-2400